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Mandatory Vaccinations: Precedent and Current Laws

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Summary

This report discusses the legal precedent for mandatory vaccination laws and provides a brief overview of state laws that require certain individuals or populations to be vaccinated against various communicable diseases. The role of both the federal and state governments with respect to public health emergency powers, including requiring the use of a vaccine, is discussed. This report will be updated as warranted.

History and Precedent

Historically, the preservation of the public health has been the responsibility of state and local governments, and the authority to enact laws relevant to the protection of the public health derives from the state's general police powers.¹ With respect to the preservation of the public health in cases of communicable disease outbreaks, these powers may include the institution of quarantine or the enactment of mandatory vaccination laws.² Mandatory vaccination laws were first enacted in the early nineteenth century, with Massachusetts enacting the first such law in 1809.³

Jacobson v. Massachusetts is viewed as the seminal case regarding a state's or municipality's authority to institute a mandatory vaccination program as an exercise of its police powers.⁴ In *Jacobson*, the Supreme Court upheld a Massachusetts law that gave municipal boards of health the authority to require the vaccination of persons over the age of 21 against smallpox, and determined that the vaccination program instituted in the city of Cambridge had "a real and substantial relation to the protection of the public health and

¹ See *The People v. Robertson*, 134 N.E. 815, 817 (1922).

² For more information on state and federal quarantine authority, see CRS Report RL31333, *Federal and State Responses to Biological Attacks: Isolation and Quarantine Authority*.

³ Lawrence O. Gostin, *Public Health Law: Power, Duty, Restraint*, p. 181 and n. 27.

⁴ 197 U.S. 11 (1905).

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 18 JAN 2005		2. REPORT TYPE N/A		3. DATES COVERED -	
4. TITLE AND SUBTITLE Mandatory Vaccinations: Precedent and Current Laws				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service Library of Congress 101 Independence Avenue, SE Washington, D.C. 20540-7500				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT SAR	18. NUMBER OF PAGES 5	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

safety.”⁵ In upholding the law, the Court noted that “the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.”⁶ The Court added that such laws were within the full discretion of the State, and that Federal powers with respect to such laws extended only to ensure that the state laws did not “contravene the Constitution of the United States or infringe any right granted or secured by that instrument.”⁷

The Court addressed the constitutional concerns raised by the petitioner in *Jacobson*, but remained unconvinced that his rights were “contravened” by the mandatory vaccination program. The petitioner argued that “his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person.”⁸ The Court rejected the petitioner’s constitutional challenge and noted that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person, to be, at all times and in all circumstances wholly free from restraint.”⁹

State Mandatory Vaccination Laws

School Vaccination Requirements. State laws mandating vaccinations for children are very common. Every state has a law requiring children to be vaccinated before they enroll in a public or private school. Early statutes required vaccination against smallpox and were amended as new vaccines were introduced.¹⁰ Many modern school vaccination laws are the result of measles outbreaks in the 1960's and 1970's.¹¹ Generally, states use the Centers for Disease Control and Prevention’s schedule of immunizations as a guide, and require children to be vaccinated against a number of diseases on the schedule, including diphtheria, measles, rubella, and polio.¹²

⁵ *Id* at 31. The Massachusetts statute in questions reads as follows: “Boards of health, if in their opinion it is necessary for public health or safety, shall require and enforce the vaccination and revaccination of all the inhabitants of their towns, and shall provide them with the means of free vaccination. Whoever refuses or neglects to comply with such requirement shall forfeit five dollars.” ALM GL ch. 111, § 181 (2004).

⁶ *Id* at 25.

⁷ *Id*.

⁸ *Id* at 26.

⁹ *Id*.

¹⁰ James G. Hodge, Jr. and Lawrence O. Gostin, *School Vaccination Requirements: Historical, Social, and Legal Perspectives*, 90 Ky. L. J. 831, 867 (2001/2002).

¹¹ *Id* at 868.

¹² *Id*. See *id* at 869 for a complete list state laws regarding school vaccination requirements.

Despite the wide-spread imposition of school vaccination requirements, many states provide exemptions for medical, religious, and, to a lesser extent, philosophical reasons. These provisions vary by state, with medical exemptions for children who may suffer adverse effects from the vaccine being the most common. For example, in Colorado and most other states, an exemption from the vaccination requirements may be obtained by submitting to the school a certification from a licensed physician that “the physical condition of the student is such that one or more specified immunizations would endanger his or her life or health or is medically contradicted due to other medical conditions.”¹³ Almost all states also grant religious exemptions for persons who oppose immunizations for religious reasons.¹⁴ The statutes allowing religious exemptions vary, with some requiring only a statement of dissent from the student, parent, or guardian, and others requiring a more specific statement regarding the child’s membership in a religious denomination that opposes immunizations.¹⁵ Exemptions based on philosophical or moral convictions in opposition to immunization are less common, but are provided by more than a dozen states, including Arizona, California, Idaho, Louisiana, Maine, Michigan, Minnesota, Nebraska, North Dakota, Ohio, Oklahoma, Vermont, Washington, and Wisconsin.¹⁶ States may specify that such religious or philosophical beliefs be “sincere” or “conscientiously held.”¹⁷

Vaccination Orders During a Public Health Emergency. Many states also have laws providing for mandatory vaccinations during a public health emergency or outbreak of a communicable disease. Generally, the power to order such actions rests with the governor of the state, the state board of health, or the state health officer. For example, in Hawaii, the Governor has the power to supplement the state’s existing compulsory vaccination programs and institute additional programs in the event of a civil defense emergency period.¹⁸ Arizona also authorizes the Governor, during a state of emergency or state of war emergency in which there is an occurrence or the imminent threat of smallpox or other highly contagious and highly fatal disease, “to issue orders that mandate treatment or vaccination of persons who are diagnosed with illness resulting from exposure or who are reasonably believed to have been exposed or who may reasonably be expected to be exposed.”¹⁹ In Florida, upon declaration of a public health emergency, the state health officer may order an individual to be vaccinated “for

¹³ Colo. Rev. Stat. § 25-4-903(2)(a) (2004).

¹⁴ Only one state - West Virginia - appears to not provide for an exemption based on religious beliefs. W. Va. Code § 16-3-4 (2004).

¹⁵ See e.g., La. Rev. Stat. Ann. § 17:170(E) (2004); Kan. Stat. Ann. § 72-5209(b)(2) (2003).

¹⁶ See *supra* note 10 at fn. 234.

¹⁷ See e.g., Massachusetts, ALM GL ch. 76, § 15 (2004); Minn. Stat. Ann. § 121A.15 (2003).

¹⁸ HRS § 128-8 (2003). State law authorizes the department of health to adopt rules “requiring and governing immunization against [communicable diseases], if a suitable immunizing agent is available for the disease and a need for immunization against it exists within the State.” HRS § 325-32 (2003).

¹⁹ A.R.S. § 36-787 (2004).

communicable diseases that have significant morbidity or mortality and present a severe danger to public health.”²⁰

Other states have provisions for mandatory vaccinations, but provide exemptions similar to those for childhood vaccinations discussed above. For example, in Connecticut, a person may refuse a vaccination if a physician determines that “it would not be prudent on account of sickness.”²¹ In Virginia, vaccination requirements may also be waived if the vaccination would be detrimental to a person’s health, as certified by a physician.²² Wisconsin allows a person to refuse a vaccination for medical reasons and also for “reasons of religion or conscience.”²³ However, if a person refuses to be vaccinated, he or she may be quarantined during the public health emergency giving rise to the vaccination order.²⁴

Model State Emergency Health Powers Act. In addition to the current laws, many states are considering or have considered the provisions set forth in the Model State Emergency Health Powers Act. The Model State Emergency Health Powers Act was drafted by The Center for Law and the Public’s Health at Georgetown and Johns Hopkins Universities.²⁵ The Model Act seeks to “grant public health powers to state and local public health authorities to ensure strong, effective, and timely planning, prevention, and response mechanisms to public health emergencies (including bioterrorism) while also respecting individual rights.”²⁶ It is important to note that this is intended to be a model for states to use in evaluating their emergency response plans, and passage of the Model Act in its entirety is not required. In fact, many states will likely use parts of the Model Act, but tailor their statutes and regulations to respond to unique or novel situations that may arise in their jurisdiction.

The Model State Emergency Health Powers Act addresses a number of issues likely to arise during a public health emergency and offers guidelines for states with respect to what powers may be necessary during such an emergency. With respect to vaccinations, the Act includes provisions similar to the current laws discussed above. Under the Model Act, during a public health emergency the public health authority would be authorized to “vaccinate persons as protection against infectious disease and to prevent the spread of contagious or possibly contagious disease.”²⁷ The Act requires that the vaccine be administered by a qualified person authorized by the public health authority, and that the vaccine “not be such as is reasonably likely to lead to serious harm to the affected

²⁰ Fla. Stat. § 381.00315 (2004).

²¹ Conn. Gen. Stat. § 19a-222 (2003).

²² Va. Code Ann. § 32.1-48 (2004).

²³ Wis. Stat. § 252.041 (2004).

²⁴ *Id.*

²⁵ A copy of the Model Act can be found at [http://www.publichealthlaw.net/Resources/Modellaws.htm].

²⁶ *Id.*

²⁷ Model State Emergency Health Powers Act, Article VI, Sec. 603.

individual.”²⁸ The Act recognizes that individuals may be unable or unwilling to undergo vaccination “for reasons of health, religion, or conscience,” and provides that such individuals may be subject to quarantine to prevent the spread of a contagious or possibly contagious disease.²⁹

Role of the Federal Government

Under the Public Health Service Act, the Secretary of Health and Human Services has the authority to make and enforce regulations necessary “to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession.”³⁰ While this language appears to confer broad authority to promulgate regulations necessary to prevent the spread of disease, the only regulations specifically authorized by the Act relate to the apprehension, detention, examination, or conditional release of individuals.³¹ The Act does not specifically authorize regulations related to mandatory vaccination programs, nor do there appear to be any regulations regarding the implementation of a mandatory vaccination program at the federal level during a public health emergency.³²

As noted above, state and local governments have the primary responsibility for protecting the public health, and this has been reflected in the enactment of state laws pertaining to public health and establishing procedures during a public health emergency. Any federal mandatory vaccination program applicable to the general public would likely be limited to areas of existing federal jurisdiction, similar to the federal quarantine authority.³³ Generally, federal regulations authorizing the apprehension, detention, examination, or conditional release of individuals are applicable only to individuals coming into a State or possession from a foreign country or a possession.³⁴ This limitation on federal jurisdiction acknowledges that states have the primary responsibility for protecting the public health, but under certain circumstances, federal intervention may be necessary. Any federal mandatory vaccination program applicable to the general public would likely incorporate similar jurisdictional limitations.

²⁸ *Id.*

²⁹ *Id.* Quarantine provisions are located in Section 604 of the Model Act.

³⁰ 42 U.S.C. 264. Originally, the statute conferred this authority on the Surgeon General; however, pursuant to Reorganization Plan No. 3 of 1966, all statutory powers and functions of the Surgeon General were transferred to the Secretary.

³¹ 42 U.S.C. 264(c).

³² For more information on federal vaccination policy, see CRS Report RL31694, *Smallpox Vaccine Stockpile and Vaccination Policy*.

³³ *See supra* note 2.

³⁴ 42 U.S.C. 264(c). However, such regulations may provide for the apprehension and examination of “any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State.” 42 U.S.C. 264(d).